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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 330

CHARLES CONLEY LYNCH, JOSEPH CARROLL,
and RICHARD BERRY NORTON,

Petitioners,

—v.—

STATE OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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INDEX

PAGE

Opinions Below 1

Jurisdiction 1

Questions Presented 2

Statement of the Case 2

REASONS FOR GRANTING THE WRIT

I. The common law crimes of "conspiracy to incite a riot", "incitement to riot" and "disorderly conduct" as defined by the Maryland Courts violate the First and Fourteenth Amendments 11

II. The application of the common law crimes of "conspiracy to incite a riot", "incitement to riot" and "disorderly conduct" to petitioners' speeches violates the First and Fourteenth Amendments 14

CONCLUSION 17

APPENDIX

Opinion by Anderson, J. 1a

Indictment Number 3700 ..... 22a

Indictment Number 3703 ..... 25a

Table of Authorities

PAGE

Cases:

Ashton v. Kentucky, 384 U. S. 195 (1966) 12, 13, 14

Cantwell v. Connecticut, 310 U. S. 296 (1940) 12, 13, 14, 15
Chaplinsky v. New Hampshire, 315 U. S. 568 (1942) 16
Cox v. Louisiana, 379 U. S. 536 (1965) 14, 16

Dennis v. United States, 341 U. S. 494 (1950) 12
Dombrowski v. Pfister, 380 U. S. 479 (1965) 13

Edwards v. South Carolina, 372 U. S. 229 (1963) 12, 13, 14, 16

Feiner v. New York, 340 U. S. 315 (1951) 16, 17

People v. Epton, 19 N. Y. 2d 496 (1967), *cert. denied* 390 U. S. 29 (1968) 13, 17

Schenck v. United States, 249 U. S. 47 (1919) 14

Terminiello v. Chicago, 337 U. S. 1 (1949) 12, 13, 15, 16
Thompson v. Louisville, 362 U. S. 199 (1960) 14

Wood v. Georgia, 370 U. S. 375 (1962) 12

Yates v. United States, 354 U. S. 298 (1957) 12

United States Constitution:

First Amendment 2, 11, 12, 13, 14

Fourteenth Amendment 2, 11, 12, 14

Statute and Rule:

28 U. S. C. §1257(3) 1

Rule Number One of the Park Rules of Baltimore City 2

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—v.—

STATE OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Opinions Below

The order of the Court of Appeals of Maryland denying certiorari is reported in 236 A. 2d 45 and appears in the Record at p. . The opinion of the Court of Special Appeals of Maryland is reported in 2 Md. App. 546, 236 A. 2d 45, and is set out in the Appendix, *infra*, pp. 1a-21a.

Jurisdiction

The Court of Appeals of Maryland denied certiorari on March 4, 1968. By order dated May 24, 1968, Mr. Chief Justice Warren extended the time within which to file this petition for certiorari to and including July 2, 1968. The jurisdiction of this Court is invoked under 28 U. S. C. §1257(3).

Questions Presented

1. Whether the common law charges of "conspiracy to incite a riot", "incitement to riot", and "disorderly conduct", on their face or as applied in this case, violate the First and Fourteenth Amendments to the United States Constitution.

2. Whether the conviction of petitioners is supported by any evidence as required by the due process clause of the Fourteenth Amendment to the United States Constitution.

Statement of the Case

Petitioners, Charles Conley Lynch, Joseph Carroll and Richard Berry Norton, members or officers of the National States Rights Party, were tried in the Criminal Court of Baltimore before a jury, under two indictments. The petitioners were charged in count one of Indictment Number 3700 with inciting a riot, in count two with riot, in count three with using profanity on a public street, in count four with disorderly conduct in a public resort, and in count five with violation of Rule Number One of the Park Rules of Baltimore City (disorderly conduct in the park). The petitioners were charged in count one of Indictment Number 3703 with conspiring to incite a riot, and in count two with conspiring with other persons unknown to riot. The charges in the indictment involved common law crimes except for count five of Indictment Number 3700 which involved a violation of the Park rules.[1]

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[1] The indictments are set out in the Appendix, *infra*, pp. 22a-26a. The State did not press Counts two and three in Indictment Number 3700, or Count two in Indictment Number 3703 (T. 515).

The jury found petitioners guilty of the charges set forth in the first, fourth and fifth counts of Indictment Number 3700 and the charges set forth in the first count of Indictment Number 3703.

Petitioners Lynch and Norton were each given concurrent sentences of two years in the House of Correction and assessed a fine of $1,000 by reason of their conviction under the first count of Indictment Number 3700 and the first count of Indictment Number 3703. In addition, petitioners Lynch and Norton by reason of their conviction under counts four and five of Indictment Number 3700 were each given concurrent sentences of thirty days in the House of Correction, to run concurrently with the other prison sentences, and were fined $50.00 (T. 567-568).[2]

Petitioner Carroll by reason of his conviction under the first counts of Indictment Number 3700 and Indictment Number 3703 was given concurrent sentences of not more than two years in the Maryland Correctional Institution. In addition, petitioner Carroll by reason of his conviction under counts four and five of Indictment Number 3700 was given sentences of thirty days each, to run concurrently with the sentences previously imposed, and a fine of $50.00 that was suspended (T. 568-569).

Petitioners were indicted and tried because of their participation in three outdoor rallies, on the 25th, 27th and 28th of July, 1966. The petitioners had applied for and received a permit on or about July 12 to hold such rallies in Patterson Park in Baltimore City between the hours

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[2] The symbol "T" refers to the pagination of the transcript of the trial which is part of the Record.

of 6:30 P.M. and 9:30 P.M. on each of the three evenings (T. 43).

The Superintendent of Parks testified that the application for a permit was submitted on behalf of a group called "Citizens of Brailsford Committee" and that he was unaware that speakers at the rally were going to be members of the National States Rights Party (T. 37, 38). The petitioners, however, had attended meetings with representatives of the police department on June 22 to discuss the application for a permit to hold such rallies and the manner of conducting such rallies and high ranking officials of the police department were fully aware that such rallies were going to be conducted by members of the National States Rights Party on behalf of the party (T. 77-79). The Superintendent of Parks acknowledged that he had spoken with a police official about the rallies prior to issuing the permit (T. 51, 52).

A rally was held on July 25th in Patterson Park in Baltimore City pursuant to the permit. The rally began at approximately 7 o'clock and continued to approximately 8 o'clock, attracting approximately 200 people (T. 131). The rally of July 25th was described by witnesses for the prosecution as orderly and peaceful notwithstanding the fact that there was some heckling of the speakers by members of the audience (T. 130, 131 and 188).

The petitioners similarly held a rally on July 27th pursuant to the permit, the rally beginning at approximately 7 o'clock and ending at approximately 8 o'clock. The rally attracted between 500 and 600 persons (T. 136) and the police had approximately 150 men present. The rally was similarly orderly and peaceful and the police "didn't have

too much trouble" (T. 111). The only potentially violent incident that occurred involved two white boys and members of petitioner's audience. The police officials were able to separate the two boys from the audience and no one was arrested or injured in connection with the incident (T. 164, 165, 166). The speakers were again heckled and police escorted members of Sparticus and CORE to their cars at the end of the rally (T. 112).

The Superintendent of Parks, by letter of July 28th, revoked the permit. This letter, introduced in evidence, contained several grounds for revoking the permit, including the assertion that there occurred (i) a disturbance of the peace, (ii) the use of unbecoming language and (iii) dangerous conduct (T. 43-45). The Superintendent of Parks had not attended the rallies of July 25 and 26 but revoked the permit on the recommendation of an assistant (T. 49).

Since the permit was revoked, the petitioners did not hold a rally on the evening of July 28th in Patterson Park. The petitioners were advised by high ranking police officials that although the permit had been revoked, the petitioners could hold a rally and speak from their sound truck located on a street adjacent to Patterson Park (T. 155). Accordingly, the petitioners spoke on the evening of July 28th from a sound truck located on a street adjacent to the park and no effort was made by the police to prevent the petitioners from speaking or holding the rally (T. 145).

The rally was described as attracting between 1500 and 3000 persons (T. 135, 219), and the police had approximately 250 men present (T. 178). Most of these people were described as curious and those actually listening to the speakers were estimated at 300 to 400 people (T. 76, 97).

The persons attending the rally were described as "making a considerable amount of noise" (T. 67) and members of the audience chanted "white man fight" (T. 68).

However, the only potentially violent incident occurring during the rally of July 28th involved the chasing of two young Negroes by a group of people in the audience. The group chasing the two Negro boys returned to the rally at the urging of petitioner Carroll and no one was hurt and no one was arrested in connection with the incident (T. 64, 65). Petitioners ended the rally at 8 o'clock upon the Police Commissioner's request to Mr. Carroll (T. 70). At the end of the rally the police again escorted members of CORE and Sparticus from the rally without injury to anyone and one white person who had attended the rally was arrested at this time as a result of an altercation with a policeman (T. 180, 181 and 182). Police also escorted several Negro boys who had been playing basketball in the park from the park without anyone being injured or arrested (T. 186).

Several incidents allegedly involving persons who attended the rally occurred outside the park after the rally had been completed. The only injury reported was a "small cut" suffered by a Negro who was attacked by five white boys (T. 420-422). The five white boys who were said to have attended the rally were arrested. Film of this incident taken by a television cameraman was introduced over objection by petitioners' counsel that the petitioners were not involved in such events. The only other persons reported to have been arrested were two white persons who had been involved several blocks from the park after the completion of the rally in a heated verbal exchange with several Negroes and did not apparently heed the requests

of policemen to leave the area (T. 144) and another white person who became involved in an altercation with a police official several blocks from the rally (T. 502). These white persons arrested were not identified as having attended the rally (T. 150, 502).

The police acknowledged that petitioners were, at all times, cooperative in attempting to maintain law and order (T. 153, 162). The petitioners repeatedly cautioned their audience against resorting to violence (T. 295, 298, 300, 301, 305, 306), stating that if there was any trouble at the rallies the people in the audience should allow "the police to handle it" (T. 300) since the police had "agreed to help maintain order here tonight" (T. 295). On occasions when the audience showed some signs of reacting to hecklers the petitioners calmed the spectators stating that others "deliberately want you to kick the hell out of them to create a disturbance" (T. 306).

The police took tape recordings of speeches made by the three petitioners on each of the three evenings. The tape recordings were introduced in evidence over the objection of petitioners' counsel that the tapes were too garbled to be admissible.

The rallies were advertised in circulars as being "educational sessions" designed to lead to the beginning of a "march to a great white political victory" in 1966 emphasizing that white Marylanders "MUST ORGANIZE" (T. 59). The petitioners set forth the aims and tenets of the National States Rights Party at the rallies as follows:

> "The platform of the National States Rights Party is the belief in God and the Resurrection of Jesus

Christ. They also believe in the constitutional government as laid down in the Constitution and Bill of Rights of the Constitution of these United States of America.

"It spells out plain and clear cut. White supremacy for the white people only—and remember, white men, white women when the Constitution was written, as it was intended by whom it was written, it was written by white people for white people and to white people only" (T. 255-256).

Repeatedly the petitioners reaffirmed their belief "in racial purity, racial segregation" (T. 247) and that this belief was based on the Constitution (T. 256). Petitioners repeatedly reiterated their white supremacist views and gave their views on employment of Negroes (T. 242), integrated education (T. 249), integrated housing (T. 242), welfare (T. 240), gun control laws (T. 266), the Negro movement and its demands (T. 239, 241) and vilified those believed to differ with these views including the President of the United States (T. 178, 240), the Supreme Court (T. 249, 250), the Mayor of Baltimore (T. 178, 269), the F. B. I. (T. 130, 178), and Jewish people (T. 267, 309). Each speaker in turn referred to Negroes as "Niggers" and Negroes were characterized as "wild animals" (T. 272). It was also advocated that all Negroes should be sent to Africa (T. 272, 287).

In order to fulfill the party's objectives, the speakers repeatedly exhorted their listeners to organize as "political organization is the only key to our success as white people" (T. 239). The defeat of open housing laws by the voters in California and other areas was praised (T. 282). The National States Rights Party was described as the "only

white racist party in Maryland to offer constructive political action" (T. 239), and "the only white man's political party in America, bar none" (T. 255). Membership in the States Rights Party was advocated since "if you plan to get into the political arena you have to have a political vehicle to do the job" (T. 259). During the rallies the party informed the audience how to become members and party literature was also distributed (T. 241).

Petitioners emphasized that they were not non-violent. Petitioner Lynch on the evening of July 27th stated that "I believe in violence" and "I believe in fighting by whatever means it takes to defend the constitution to preserve our white race and keep our government in the hands of white people and our children white" (T. 252). Petitioners Norton and Carroll made similar statements about violence. In this connection, petitioner Lynch predicted that some day "black power" and "white power" will meet "in a battlefield and the question will be settled and when the smoke clears away there'll be nothing but white faces left" (T. 262) and that "Niggers are going to be hanged • • • more than ever been hanged before in any country or in any nation in all the world" (T. 263). The petitioners did not, however, urge that members of its audience should resort to violence. Petitioner Lynch stated that his gun was "this mouthpiece of mine" (T. 267) and petitioner Norton requesting that there should not be any violence, stated that "We are not inciting you to riot. The only thing I hope we are inciting you to—is victory" (T. 300-301).

In its charge to the jury, the Court defined the common law crimes of riot as "a disturbance of the peace by three or more assembled persons who carry out a common pur-

pose in such violent and turbulent manner as is calculated to terrify others", and the common law crimes of inciting to riot as willfully "arousing or inducing others to commit a riot" (T. 519). Conspiracy was defined by the Court as "a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose". The Court further instructed the jury that the finding of a conspiracy did not depend upon the "doing of any overt act" by the conspirators or that "the alleged conspirators came together and actually came to terms of a design and pursued it by criminal means" (T. 521). The Court defined the common law crimes of "disorderly conduct" as "the doing or saying or both, of that which offends, disturbs, incites or tends to incite a number of people gathered in the same area. It is conduct of such a nature as to affect the peace and quiet of persons who may witness it and who may be disturbed or provoked to resentment because of it" (T. 520). The Court stated prior to describing the legal concepts involved in the indictment that "under the constitution and laws of this state, the jury in the trial of a criminal case is the judge of both the law and the facts" and accordingly "anything the court may say to you about the law is advisory only. It is intended to help you, but you are at liberty to reject the court's advice of the law and arrive at your own independent conclusion on the law if you desire to do so" (T. 516, 517).

The Court commented on the evidence stating that "the three defendants made remarks and delivered speeches derogatory to Negroes and advocating violence" (T. 524). The Court did state prior to commenting on the evidence that "if I should make any comments on the facts, you

are not bound by any such comments in any respect" (T. 517).

On December 6, 1967 the Court of Special Appeals of Maryland affirmed the conviction of petitioners and on March 4, 1968 the Court of Appeals of Maryland denied certiorari.

The constitutional questions presented were raised by petitioners at trial and rejected by the trial court (T. 505-515). The constitutional issues were again raised on appeal to the Court of Special Appeals of Maryland and in the petition for certiorari to the Court of Appeals of Maryland.

REASONS FOR GRANTING THE WRIT

I.

The common law crimes of "conspiracy to incite a riot", "incitement to riot" and "disorderly conduct" as defined by the Maryland Courts violate the First and Fourteenth Amendments.

Although the petitioners were convicted of the common law crimes of "incitement to riot", "conspiracy to incite riot" and "disorderly conduct" solely by reason of speeches that they made on July 25, 26 and 28, neither the trial court nor the Maryland Court of Special Appeals included in the definition of such crimes the requirement that the speeches had either caused a "riot" or a "disturbance of the peace", or gave rise to a "clear and present danger" that a "riot" or "disturbance of the peace" would occur. The common law of Maryland as interpreted by the Maryland Courts thereby permits conviction of persons for

speeches that they have made without requiring a determination that such speeches caused either violence or any other conduct adverse to a substantial interest of the State or created a "clear and present danger" of such conduct occurring. As so interpreted, the common law of Maryland is not in accord with the First and Fourteenth Amendments of the Constitution as interpreted by this Court, which requires that there be a "clear and present danger" that forbidden acts will result from speech before the making of such speech may be punished. *Terminiello* v. *Chicago,* 337 U. S. 1 (1949); *Dennis* v. *United States,* 341 U. S. 494 (1950); *Yates* v. *United States,* 354 U. S. 298 (1957); *Wood* v. *Georgia,* 370 U. S. 375 (1962). The failure by the Maryland Courts to require a determination of a "clear and present danger" is of particular significance where persons are being tried for a common law crime and are not being punished under a "statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State". *Cantwell* v. *Connecticut,* 310 U. S. 296 (1940). See also *Edwards* v. *South Carolina,* 372 U. S. 229 (1963) and *Ashton* v. *Kentucky,* 384 U. S. 195 (1966).

In addition, neither the trial court nor the Maryland Court of Special Appeals precisely defined the scope of such common law crimes. The trial court included within its definition of "incitement to riot" the use of speech that has the effect of "arousing" others to commit violence and defined disorderly conduct in terms substantially identical to the definition that had been held unconstitutional in *Terminiello, supra.* Similarly, the Maryland Court of Special Appeals in affirming the conviction defined the type of speech that may be punished in such a manner that not even the content of such speech may be determinative since:

> "We point out, however, that the ways in which mob violence may be worked up are subtle and various. Rarely will a speaker directly urge a crowd to lay hands on a victim or class of victims. An effective and safer way is to incite mob action while pretending to deplore it" (239 A. 2d at 54; App., *infra* p. 17a).

Furthermore, the trial court instructed the jury that it could disregard even such broad definitions of the crimes and could supply its own definitions (T. 516, 517). Accordingly the jury could have convicted petitioners without finding that they intended to incite violence, or petitioners could have been convicted because the jury strongly disapproved of the content of petitioners' speeches. Consequently, the charges also offend the prohibition in the First Amendment area against vagueness and overbreadth. *Terminiello* v. *Chicago, supra, Cantwell* v. *Connecticut, supra, Edwards* v. *South Carolina, supra, Ashton* v. *Kentucky, supra,* and *Dombrowski* v. *Pfister,* 380 U. S. 479 (1965).[3]

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[3] The crimes here, as interpreted by the Maryland Courts, are to be compared with *People* v. *Epton,* 19 N. Y. 2d 496 (1967), *cert. denied* 390 U. S. 29 (1968), where the trial court charged the jury that a necessary element of the crime of "advocacy of criminal anarchy" and "conspiracy to riot" was a finding that there existed a "clear and present danger" that the defendants' speeches would cause the evil sought to be prevented.

II.

The application of the common law crimes of "conspiracy to incite a riot", "incitement to riot" and "disorderly conduct" to petitioners' speeches violates the First and Fourteenth Amendments.

This Court, long recognizing that "the character of every act depends upon the circumstances in which it is done", *Schenck* v. *United States,* 249 U. S. 47, 52 (1919), has in First Amendment cases consistently examined the nature of the speeches and the circumstances in which the speeches were given in order to determine if punishment for such speeches violated the First Amendment of the Constitution. See e.g. *Edwards* v. *South Carolina, supra,* and *Cox* v. *Louisiana,* 379 U. S. 536 (1965). In addition to the due process requirement that there be some evidence to support a conviction, *Thompson* v. *Louisville,* 362 U. S. 199 (1960), this Court has given especially close scrutiny to the evidence where punishment is imposed under the common law rather than under a narrowly defined statute. *Cantwell* v. *Connecticut, supra, Edwards* v. *South Carolina, supra,* and *Ashton* v. *Kentucky, supra.* Thus certiorari should be granted in this case because there is a substantial question whether the evidence introduced at petitioners' trial was sufficient to establish (i) that petitioners by their speeches intended to incite a riot or disturb the peace, or that their speeches established a conspiracy to incite a riot, or (ii) that petitioners' speeches caused a riot or gave rise to a clear and present danger of riot.

Testimony by witnesses for the State at trial established that petitioners repeatedly urged their audience to co-

operate with the police and not to commit violent acts (T. 295, 298, 300, 301, 305, 306). Other testimony established that petitioners themselves cooperated at all times with the police (T. 153, 162). In such circumstances, there is a substantial question whether the petitioners were convicted for "inciting to riot" and "conspiracy to riot" or were convicted for advocating racist and anti-semitic views. In *Terminiello* which similarly involved a racist and anti-semitic speaker, this Court recognizing the speaker's right to assert his views said:

> "Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea." 337 U. S. at 4.

Nor can petitioners' speeches be said to have caused a riot or to have created a "clear and present danger" of riot. While this Court has stated that a person may be punished for "inciting to riot", it has also stated that evidence of the existence of "a clear and present danger" of riot is necessary. *Cantwell* v. *Connecticut, supra.* The testimony at the trial indicated that petitioners' rallies attracted several thousand people. Notwithstanding the size of the crowds, only a few incidents were reported and there is doubt whether most of these incidents, which occurred after the rally, could be attributed to petitioners' speeches. Furthermore, there was only one minor injury reported and only nine arrests. Furthermore, there was

no evidence introduced at the trial that any members of groups verbally attacked by petitioners at the rallies committed any acts of violence by reason thereof.

Evidence that members of petitioners' audience were loud and boisterous cannot justify the conviction of petitioners since in *Edwards* this Court stated that "boisterous, loud and flamboyant" behavior of defendants and members of the crowd was not sufficient to justify a finding of guilt of breach of the peace where "there was no violence or threat of violence on [petitioner's part] or on the part of any member of the crowd watching them." 372 U. S. at 236. Similarly, in *Cox,* this Court reversed a conviction for breach of the peace notwithstanding the fact that two thousand angry Negro students were pitted against a crowd of "muttering" and "grumbling" [white] "onlookers", 379 U. S. 543. In addition, in *Cox* the evidence presented at the trial indicated that the defendants had advocated the then illegal acts of sitting at a segregated lunch counter and had advocated resistance of police orders.

The Court below disregarded *Terminiello, Cox,* and *Edwards* and relied instead on *Chaplinsky* v. *New Hampshire,* 315 U. S. 568 (1942) and *Feiner* v. *New York,* 340 U. S. 315 (1951).

Chaplinsky carved out an area of speech embracing "face to face words plainly likely to cause a breach of the peace by the addressee, words whose speaking constitutes a breach of the peace by the speaker." 315 U. S. at 573. Reliance upon this case to punish a political speech to a large audience is misplaced. Similarly the decision of this Court in *Feiner* is distinguishable from this case. Petitioner in *Feiner* specifically urged Negroes to "rise up in arms" and did not caution against violence and disregarded police

requests rather than cooperating with the police. Furthermore, the trial court in *Feiner,* a case tried without a jury, specifically examined the evidence to determine that there was a "clear and present danger" of violence and this Court reexamined the evidence to ascertain if such determination was supported by the evidence. A similar finding was made by the jury in *Epton.* No such determination has been made by the courts below and it is submitted that there is a substantial constitutional question as to whether the evidence in this case would support such a determination.

CONCLUSION

For the reasons set forth above, certiorari should be granted.

Respectfully submitted,

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July 2, 1968

APPENDIX

REPORTED

IN THE

COURT OF SPECIAL APPEALS OF MARYLAND

No. 329

Initial Term, 1967

CHARLES CONLEY LYNCH, JOSEPH CARROLL
and RICHARD BERRY NORTON

—v.—

STATE OF MARYLAND

ANDERSON, MORTON, ORTH, THOMPSON, *JJ.*

Opinion by Anderson, *J.*

Filed: December 6, 1967

Appellants, Charles Conley Lynch, Joseph Carroll and Richard Berry Norton, were tried in the Criminal Court of Baltimore by a jury, Judge J. Gilbert Prendergast presiding, under two indictments. Indictment Number 3700 charged the defendants in count one with inciting a riot, in count two with riot, in count three with using profanity on a public street, in count four with disorderly conduct in a public resort, and in count five with violation of Rule Number One of the Park Rules of Baltimore City (disorderly conduct in the park). Indictment Number 3703

charged the defendants with conspiring to incite a riot in count one, and conspiring with other persons unknown to riot in count two.

Appellants were convicted under the first, fourth and fifth counts of Indictment Number 3700, and under the first count of Indictment Number 3703. Motions for new trials were denied, and appellants Lynch and Norton under the first count of Number 3700 and the first count of Number 3703 each was given concurrent sentences of two years in the House of Correction and, in addition, a fine of one thousand dollars ($1,000.00). Under counts four and five of Indictment Number 3700, Lynch and Norton each was given concurrent sentences of thirty days in the House of Correction and a fine of fifty dollars ($50.00), also to run concurrently with the other sentences. Lynch and Norton, therefore, were given a total of two years in the House of Correction and, in addition, a fine of one thousand dollars ($1,000.00) each.

Appellant Carroll under the first counts of Indictments Number 3700 and 3703 was given concurrent sentences of not more than two years in the Maryland Correctional Institution and no fine. Under counts four and five of Indictment Number 3700 he was given sentences of thirty days each, to run concurrently with the sentences previously imposed under the first counts of Indictment Numbers 3700 and 3703 and a fine of fifty dollars ($50.00), which was suspended.

The indictments arose out of a series of three public meetings in Patterson Park, in Baltimore City, that were held on the 25th, 27th and 28th of July, 1966. The three appellants participated in the rallies held by The National States Rights Party in Patterson Park on the three evenings in question, although the permits were issued for "The Citi-

zens of Brailsford Committee" to conduct political rallies in Patterson Park on those dates. At no time was the Park Superintendent advised that the National States Rights Party desired to hold rallies in Patterson Park, nor was there any evidence that the citizens for Brailsford Committee participated in any of the rallies actually held, nor was Brailsford's name ever mentioned. Moreover, each of the speakers, and the literature disseminated on these occasions, referred only only to The National States Rights Party as the sponsoring organization.

Each of the appellants spoke on the evenings of July 25th, July 27th and July 28th, 1966. Their speeches were given over a voice amplified system which was wired to a sound truck. Throughout the course of the rallies on the nights in question their speeches were laced with offensive epithets directed towards Negroes, Jews and certain political institutions and officeholders. Some of the remarks made during the course of the rallies were as follows:

On July 25th, Joseph Carroll said:

> "The time has come for all white youths to unite and fight for white power. Let's smash this nigger revolution here and now." • • • "I guarantee you we are the loudest bunch of hate mongers in the entire State." • • •
>
> "Are we going to let these vile black beasts to run wild, pillage, rape our white people? The time has come for us to fight and that is exactly what we are going to do. How about you?"

Richard Berry Norton was the second speaker. Among other things, he said:

"Connie Lynch on the subject of violence is a moderate. I know he is a moderate. Connie Lynch personally told me he favors just enough moderate violence to get the niggers the hell out of America."

The final speaker was Charles Conley Lynch who repeated epithets directed against the Negro and Jewish minorities, the Federal Bureau of Investigation, governmental leaders and the United States Supreme Court. Among other things, he said:

"Let me tell you, let me remind all of you niggers and you nigger lovers, whatever you be, whether you be politicians and what have you, you're just beginning to see and hear a little bit of what you're going to see and hear in the very near future—and you can be sure of that. Niggers are going to be hanged. More than ever been hanged before in any country or in any nation in all the world."

Later, he said:

"Certainly I believe in violence." • • • "Anybody ask you to believe in non violence to defend what you believe is right you tell him 'Hell, yes you believe in violence'. • • • How you folk feel about it?" • • • "We are going to kill all the niggers if it takes that to keep us white. How do you folks feel about that?"

On the 27th, each speaker repeated the themes advanced on the 25th. Joseph Carroll said:

"Most of these nigger lovers are sick in the mind. • • • they should be bound, hung and killed." "• • • if they want violence we'll give it to them. White man, that is the time to get your gun and kill your share of nig-

gers * * * we'll never, never have any racial peace and there can be no peace until the nigger hangs from every lamppost." "White man fight."

Richard Berry Norton said:

"I know when they [C. O. R. E.] open up you white folks are going to beat the hell out of them."

Charles Conley Lynch said:

"Rise up and unite white man and fight."

At the meeting on July 28th, Joseph Carroll said:

"The white people aren't going to tolerate any more of this, they are going to riot. There is only one way." * * * "I want you to watch me. Raise your right fist and shake it. White man, fight."

Richard Berry Norton said:

"Are you ready to fight?"

Charles Conley Lynch said:

"I know you are enthused with fight."

The above excerpts are only a small portion of what was said, and the appellants' speeches on each of the three evenings were so inflammatory, insulting and offensive as to have a direct tendency to cause acts of violence by those listening. Each evening the crowd grew in numbers, and on July 28th, by some estimates, reached as many as three thousand. Fearing serious trouble, Mr. Myerly, the Park Commissioner, on July 28th cancelled the permit because of violations of Park rules committed on the two previous

nights. However, the appellants parked their sound truck adjacent to Patterson Park on the evening of July 28th and each of the appellants delivered speeches consisting of a repetition of those given on the two previous evenings.

During the course of the three evenings involved, there were a number of incidents. Because of the temperament of the crowd, it was necessary for the police to assist members of C. O. R. E. and a group called Sparticus away from the scene of the meetings. On the evening of the 28th, part of the crowd listening to the speeches, having been incited by them, began chasing two Negro boys who were merely passing through the park. Also, on the evening of the 28th, an incident took place in the 200 block of Montford Avenue about two blocks north of Baltimore Street and one block from where Luzerne Street meets Patterson Park. Another incident on the 28th took place near the swimming pool and basketball courts in Patterson Park. This involved a number of people who had been at the rally and had run in that direction. Still another incident involved one Dennis Alexander, a 16 year old Negro youth, who was walking his dog near Patterson Park. He was beaten by a group of white boys and a rope put around his neck. The boys, who inflicted the beating, came from Patterson Park.

At each of the rallies tape recordings of the speeches were made. These tapes were admitted into evidence and were played for the court and jury. Also, photographs were taken on the evenings of the rallies in and near Patterson Park and were admitted into evidence. In addition, moving pictures, taken by a television newsman, were admitted in evidence.

I

Appellants first contend that the court committed reversible error in permitting the State to introduce State's Exhibits Numbers 7A, 7B and 7C, same being the tape recordings of appellants' meetings on the 25th, 27th and 28th of July, 1966. Their sole argument as to this contention is that the tape recordings were too garbled to corroborate the testimony of any of the State's witnesses or give the jury a true report of what appellants said at the three meetings. We find no merit in this contention. The quality of the reproduction of the tape recordings would go to the weight of the evidence rather than its admissibility. While it is true that certain parts of the recordings were inaudible, the greater portion was readily intelligible and would be admissible. A witness may testify as to so much of a conversation as he over hears notwithstanding the fact that other parts were inaudible. See Annotation, 58 A. L. R. 2d 1024, 1038. See also *United States* v. *Schanerman,* 150 F. 2d 941 (3 Cir. 1945).

II

Appellants' second, third and fourth contentions may be considered together. In essence they contend that the court erred in admitting into evidence certain testimony, photographs and motion picture film of events which did not occur at the precise location where appellants were speaking, and that they involved incidents that took place out of sight of the appellants and away from where they were actually speaking. It is clear from the testimony that all of the incidents involved occurred shortly after the time that appellants were speaking and within a few blocks of where they were speaking. Such evidence would be as much a part of the *res gestae* as what occurred in the actual

presence of the appellants. *Cohen* v. *State*, 173 Md. 216, 195 A. 532, cert. den. 303 U. S. 660 (1937), involved charges against a union organizer of inciting a riot and for riot. The dispute involved in that case lasted several weeks, and the meetings and other incidents which allegedly constituted the criminal acts of inciting to riot took place on a number of occasions and in a number of different locations. Testimony was admitted of certain incidents where the appellant was not present at all. The Court held that such testimony was clearly within the *res gestae* and was properly admitted into evidence on the grounds that the disorders had been incited, encouraged, aided and abetted by him. See also *Wilson* v. *State*, 181 Md. 1, 3, 4, 26 A. 2d 770 (1942) and *Stevens* v. *State*, 232 Md. 33, 40, 192 A. 2d 73, cert. den. 375 U. S. 886 (1962).

Here, the testimony, photographs and motion pictures involved events in which individuals who were at the meetings at which appellants spoke and who were coming directly from such meetings were participants and are part of the *res gestae*.

III

Appellants' fifth, sixth, eighth, ninth and tenth contentions will be considered together. These contentions, in substance, allege that the charges brought against the appellants infringe upon their constitutional right of free speech. This contention is the real thrust of appellants' appeal. Appellants argue that the court, by refusing to grant appellants' motions for judgments of acquittal at the close of all the evidence, deprived them of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution, since they were only exercising their constitutional rights under the Fourteenth and

First Amendments to the Constitution when they spoke at their three rallies in Patterson Park in Baltimore on the 25th, 27th and 28th of July, 1966, citing *Thornhill* v. *Alabama,* 310 U. S. 88, 84 L. Ed. 1093, 60 S. Ct. 736. In *Thornhill* v. *Alabama, supra,* the United States Supreme Court held that an Alabama statute which made loitering and picketing forbidden was invalid on its face as violative of freedom of speech and of the press since the State courts, among other things, construed the statute as forbidding the publicising of the facts concerning a labor dispute whether by printed sign, by pamphlet, by word of mouth or otherwise in the vicinity of the business involved. There the Court said:

> "The freedom of speech and of the press guaranteed by the Constitution embraces at least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment."

In its finding, the Court held that freedom of speech and of the press secured by the First Amendment against abridgement by the United States is secured to all persons by the Fourteenth Amendment against abridgement by the States.

Here, however, the facts are not like those in *Thornhill* v. *Alabama, supra.* The speeches of the appellants contained language and epithets of such a nature as to incite their audience to riot and were composed of derisive and fighting words which carried their remarks outside of the constitutional guarantees. Their speeches were calculated to cause the interracial disorders which resulted therefrom and were therefore not within the guarantees of free speech.

In *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 86 L. Ed. 1031, 62 S. Ct. 766, Chaplinsky was convicted under a State law denouncing the use of offensive words when addressed by one person to another in a public place.[1] Chaplinsky, a member of the sect known as Jehovah's Witnesses, was distributing the literature of his sect on the streets of Rochester on a busy afternoon. Members of the local citizenry complained to the City Marshall, Bowering, that Chaplinsky was denouncing all religion as a "racket." Bowering told them that Chaplinsky was lawfully engaged and then warned Chaplinsky that the crowd was getting restless. Sometime later, a disturbance occurred and a traffic officer started with Chaplinsky for the police station, but had not placed him under arrest. On the way, they met Marshall Bowering, who had been advised that a riot was under way and was hurrying to the scene. Bowering repeated his earlier warnings to Chaplinsky, who then said to Bowering: "You are a God damned racketeer and a damned Facist and the whole government of Rochester are Facists or agents of Facists." Following his conviction and affirmance by the Supreme Court of the State, his case reached the Supreme Court of the United States on appeal. In affirming his conviction, the Supreme Court held that a State could punish as a breach of the peace use of epithets such as "damned racketeer" and "damned facists" addressed to persons or groups, because such epithets are likely to provoke the average person to retaliation. In pointing out that under the broadest scope of the language

[1] "No person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name, nor make any noise or exclamation in his presence and hearing with intent to deride, offend or annoy him, or to prevent him from pursuing his lawful business or occupation."

and purpose of the Fourteenth Amendment the right of free speech is not absolute at all times, the Court in its opinion said:

> "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."

While the Supreme Court of the United States has in numerous decisions made clear that freedom of speech and freedom of the press, which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties, which are protected by the Fourteenth Amendment from invasion by State action, it has been careful to note that there are limits to the exercise of these liberties.

In *Cantwell* v. *Connecticut*, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, where the defendant's conviction of the common law offense of breach of the peace was held to be violative of the Constitutional guarantees of religion, liberty and free speech under the First Amendment as embodied in the Fourteenth Amendment, the Court in its opinion took occasion to point out that the offense known as breach of the peace includes not only violent acts but

words likely to produce violence in others. The Court in its opinion at page 308 said:

> "No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious."

In *Cantwell,* the Court pointed out that the danger in these times from coercive activities of those who in the delusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal right to the exercise of their liberties is emphasized by events familiar to us all. What the Court then said in 1940 is far more important in our ever changing society of today. As so well set forth in *Cantwell,* resort to epithets or personal abuse is not in any sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under the Constitution.

In *Feiner* v. *New York,* 340 U. S. 315, 95 L. Ed. 267, 71 S. Ct. 303, the facts were quite similar to the facts in the instant case. There, Feiner made an inflammatory speech to a mixed crowd of 75 or 80 Negroes and white people on a city street. He made derogatory remarks about President Truman, the American Legion, and local police officials. He spoke from a large wooden box on the sidewalk through a loud speaker system attached to an automobile. The police officers, who came as a result of a call, made no

effort to interfere with his speech, but were first concerned with the effect of the crowd on pedestrians and vehicular traffic. At this time Feiner was speaking in a loud, high pitched voice and gave the impression that he was endeavoring to arouse the Negro people against the whites urging that they rise up in arms and fight for equal rights. The crowd which blocked the sidewalk and overflowed into the street became restless. Its feelings for and against the speaker were rising and there was at least one threat of violence. After observing the situation for sometime without interference, the police officers, in order to prevent a fight, three times requested the petitioner to get off the box and stop speaking. After his third refusal and after he had been speaking for thirty minutes, they arrested him, and he was convicted of violating Section 722 of the Penal Code of New York, which, in effect, forbids incitement of a breach of the peace, namely, disorderly conduct. His conviction was affirmed by two New York Courts on review. The United States Supreme Court sustained his conviction against a claim that it violated Feiner's right of free speech under the First and Fourteenth Amendments. In so holding, the Court found that Feiner was neither arrested nor convicted for the making, or the content of his speech, but for the reaction which it actually engendered. The Court further held that while the police cannot be used for the suppression of unpopular views, when a speaker passes the bounds of argument or persuasion and undertakes incitement to riot, the police are not powerless to prevent a breach of the peace.

In support of their contentions, appellants place great reliance upon *Terminello* v. *Chicago*, 337 U. S. 1, 93 L. Ed. 1131, 69 S. Ct. 894. The case grew out of an address Terminello delivered in Chicago under the auspicies of the

Christian Veterans of America. The meeting attracted considerable public attention. The auditorium was filled to capacity with over 800 people present. Outside a crowd of about 1000 persons gathered to protest against the meeting. The police assigned to maintain order were not able to prevent several disturbances. The crowd outside was angry and turbulent. Terminello, in his speech, condemned the conduct of the crowd outside and vigorously, if not viciously, criticized various political and radical groups whose activities he denounced as inimical to the Nation's welfare. As a result Terminello was found guilty by a jury of disorderly conduct in violation of a city ordinance of Chicago.

His conviction was reversed by the Supreme Court on the grounds that the trial court's construction of the ordinance in its charge to the jury was so broad as to extend the ordinance into the area of protected speech under the First Amendment as applied through the Fourteenth Amendment to the States. Mr. Justice Douglas, in speaking for the majority, said:

> "The argument here has been focused on the issue of whether the content of petitioner's speech was composed of derisive, fighting words, which carried it outside of the scope of the constitutional guarantees. See *Chaplinsky* v. *New Hampshire,* 315 U. S. 568; *Cantwell* v. *Connecticut,* 310 U. S. 296, 310. We do not reach that question for there is a preliminary question that is dispositive of the case.
>
> "As we have noted, the statutory words 'breach of the peace' were defined in instructions to the jury to include speech which 'stirs the public to anger, invites dispute, brings about a condition of unrest, or creates

a disturbance * * * .' That construction of the ordinance is a ruling on a question of state law that is as binding on us as though the precise words had been written into the ordinance." [2]

The majority therefore in reversing never reached the actual facts presented in *Terminello*. Since *Terminello* was not decided on its merits, we are of the opinion that it is not binding upon us.

Appellants further rely upon *Cox* v. *Louisiana*, 379 U. S. 536, 559, 13 L. Ed. 2d 471, 487, 85 S. Ct. 453, 476. In that case the Supreme Court reversed Cox's convictions of disturbing the peace and obstructing public passages and courthouse picketing. The Court held that the Louisiana breach of the peace statute on its face, and as construed by the State Supreme Court, is so broad as to be unconstitutionally vague under the First and Fourteenth Amendments. The Court reversed his conviction for courthouse picketing for other reasons. The facts briefly stated are that Cox addressed a group of some 2000 Negro students who were protesting segregation and the arrest and imprisonment the previous day of other Negro students who had participated in a protest against racial segregation. In his speech Cox said, in effect, that it was a protest against the illegal arrest of some of their members and that other people were allowed to picket; that they were not going to commit any violence, and if anyone spit on them they would not spit back on the person that did it. In concluding, he said:

---

[2] The ordinance as construed by the trial court "permitted conviction of petitioner if his speech stirred people to anger, invited public dispute, or brought about a condition of unrest. A conviction resting on any of these grounds may not stand."

"All right. It's lunch time. Let's go eat. There are twelve stores we are protesting. A number of these stores have twenty counters; they accept your money from nineteen. They won't accept it from the twentieth counter. This is an act of racial discrimination. These stores are open to the public. You are members of the public. We pay taxes to the Federal Government and you who live here pay taxes to the State."

The sheriff, construing as inflammatory Cox's concluding exhortation to the students to "sit in" at lunch counters, ordered dispersal of the group, which, not being directly forthcoming, was effected by tear gas. Cox was arrested the next day and charged with violating the Louisiana breach of the peace statute.

In the majority opinion, the Court distinguished the situation here from the situation in *Feiner* v. *New York, supra* and *Chaplinsky* v. *New Hampshire, supra,* and pointed out that nothing said in its opinion was "to be interpreted as sanctioning riotous conduct in any form or demonstrations, however peaceful their conduct or commendable their motives, which conflict with properly drawn statutes and ordinances designed to promote law and order, protect the community against disorder, regulate traffic, safeguard legitimate interest in private and public prop erty, or protect the administration of justice and other essential governmental functions."

Here, the facts are vastly different. At the three meetings in Patterson Park the three appellants made inflammatory speeches against the Negroes and Jews. The meetings were advertised by handbills which announced the speakers would be the speakers of the National States Rights Party and especially discussed the Rev. Connie

Lynch (appellant Lynch) and described him as America's most exciting racist speaker. The appellants spoke over loud speakers and their speeches were fully intended to inflame their aduience against Negroes and bring about the results that followed. The whole purport of their remarks was to encourage violence in their listeners. Remarks such as "white man fight," "we are going to kill all the niggers if it takes that to keep us white," "white man, that is the time to get your gun and kill your share of niggers," "we'll never, never have any racial peace and there can be no peace until the nigger hangs from every lamp post." Such remarks could only incite to violence and riot those who were listening and also those against whom their remarks were directed.

At the trial of the case appellants on numerous occasions sought to elicit testimony that in their speeches they cautioned against violence and never told those listening to go out and riot and on at least one occasion called the crowd back when it was getting out of hand. We point out, however, that the ways in which mob violence may be worked up are subtle and various. Rarely will a speaker directly urge a crowd to lay hands on a victim or class of victims. An effective and safer way is to incite mob action while pretending to deplore it.

We find from the speeches delivered by the appellants on the 25th, 27th and 28th of July, 1966 the appellants were engaged in non-protected speech making as defined in *Chaplinsky* v. *New Hampshire, supra,* and *Feiner* v. *New York, supra.*

We therefore find appellants' contentions five, six, eight, nine and ten to be without merit.

IV

Appellants' seventh contention (taken out of context) is that the court committed reversible error in denying appellants' motions to dismiss Indictments No. 3700 and 3703 on the grounds stated therein. They contend that the indictments in these cases "failed to state an offense under the unconstitutional common law statutes of Inciting to Riot and Conspiracy to Incite to Riot and the other offenses alleged." They further contend that the above cited indictments are too vague, indefinite and uncertain to enable appellants and their counsel to prepare a defense. In support of this contention they argue that the Fourteenth Amendment to the United States Constitution gives the appellants the benefits of the Sixth Amendment and the rest of the Federal Bill of Rights; and that the Sixth Amendment provides that the defendant in a criminal case should be informed of the nature and cause of the accusation. First, that the indictment must be sufficiently certain to enable the defendant to plead jeopardy in a subsequent indictment, and, second, sufficiently certain to enable the defendant to prepare and make his defense. Citing *United States* v. *Merrick,* 207 Fed. Supp. 929, 930.

We find appellants' seventh contention to be without merit. The crimes for which the appellants were indicted are all common law offenses, with the exception of the violation of the Park rule, and each indictment in its respective counts sets forth the common law offense for which the appellants were indicted in the form commonly used for such indictments. Hochheimer's Criminal Law 2d Ed. § 392, 397, 429, 430, 431 and 285, 286 and 287.

An indictment must be so framed as to inform the defendant of the charge against him in order that he may pre-

pare his defense and may also protect himself against a subsequent prosecution for the same offense. *Seidman* v. *State,* 230 Md. 305, 312, 187 A. 2d 109. This right is guaranteed by Article 21 of the Maryland Declaration of Rights and the due process clause of the Fourteenth Amendment to the Constitution of the United States. *Pearlman* v. *State,* 232 Md. 251, 192 A. 2d 767.

Here, the indictments specify the time, the place, and the acts for which appellants were criminally charged and informed appellants of the charges against them with reasonable certainty. The first two counts in Indictment No. 3700 charge the appellants with inciting a riot and riot. Each count contains a charge that there was an unlawful assembly as is necessary in such an indictment and are in substantially the same form as those upon which the conviction of the defendant in *Cohen* v. *State, supra,* was affirmed. The other counts are in the usual from and wording to fully acquaint appellants of the charges. Hochheimer, 2nd Ed., § 392, 396. In Indictment No. 3703, in which appellants are charged with conspiracy to incite a riot and conspiracy to riot, the indictment is so framed as to sufficiently inform the appellants of the charges against them. The general rule with respect to a conspiracy indictment is that it need state only the conspiracy and the object of it; the means by which it was intended to be accomplished are only matters of evidence to prove the charge. *Pearlman* v. *State, supra; Piracci* v. *State,* 207 Md. 499, 516, 115 A. 2d 262.

Appellants' further contention that the offenses charged in the indictments are common law crimes and should have been codified and are thus unconstitutional is without merit.

V

Appellants' twelfth contention is that the evidence was insufficient to sustain verdicts of guilty under Indictments Number 3700 and 3703.

This contention has no merit. When a case is tried by a jury, this Court does not weigh the evidence presented to the jury, but only determines its sufficiency to take a particular issue or the entire case to the jury. *Ramsey* v. *State,* 239 Md. 561, 212 A. 2d 319; *Graef* v. *State,* 1 Md. App. 161, 228 A. 2d 480.

In the case at bar there was ample testimony based on the events that occurred at the rallies in Patterson Park and in its vicinity on the evenings of July 25th, 27th and 28th, 1966, in which the three appellants took so active a part to take the case to the jury on the charges of inciting a riot, disturbing the public peace and violation of Rule 1 of the Board of Recreation and Parks of Baltimore City (disturbing the peace in any park) and with conspiracy to riot.

VI

Appellants' final contention is that the sentences and fines imposed upon them constitute cruel and unusual punishment.

The crimes for which the appellants were convicted are all common law offenses save the violation of the Park rule. In the case of common law crimes, the only restrictions on sentence are that it be within the reasonable discretion of the trial judge and not cruel and unusual punishment. In the imposition of sentence, the court must not only consider the accused, but in cases of serious import, the example to others of like inclination. *Cohen* v. *State, supra,*

at page 232. Appellants argue that they are being punished for the mere use of words. Such is not the case. When the inflammatory language of appellants is considered and the possible disasterous consequences of a race riot which could have resulted but for the prompt and effective work of the police department, the court was within its discretion in imposing the sentences it did upon the appellants. The consequences of their offenses were serious, and violations of the law such as they were found guilty of provoking and committing cannot be minimized. We find that the court acted well within its discretion. See *Carroll* v. *Princess Anne*, 247 Md. 126.

Judgment affirmed.

Indictment Number 3700

CITY OF BALTIMORE, to wit:

The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present that JOSEPH CARROLL, CHARLES CONLEY LYNCH, RICHARD BERRY NORTON, EDWIN FRANCIS HINDLE and PAUL W. CORDLE late of said City, on the twenty-eighth day of July, in the year of our Lord nineteen hundred and sixty-six, at the City aforesaid, together with divers persons to the Jurors aforesaid unknown, unlawfully did assemble and wilfully did incite a riot, by the use of words, signs, language and other means, against the peace, government and dignity of the State.

SECOND COUNT.

And the Jurors aforesaid, upon their oath aforesaid, do further present that JOSEPH CARROLL, CHARLES CONLEY LYNCH, RICHARD BERRY NORTON, EDWIN FRANCIS HINDLE and PAUL W. CORDLE late of said City, on the said day, in the said year, at the City aforesaid, together with divers persons to the Jurors aforesaid unknown, unlawfully, riotously and tumultuously did assemble and gather together to disturb the peace of the said State; and then and there being so gathered together did make a great noise, riot, tumult and disturbance, and then and there unlawfully, riotously and tumultuously remained and continued, together for a long space of time, to the great terror and disturbance of the persons thereabout inhibiting, residing and being; and to the terror of the people of the said State, against the peace, government and dignity of the State.

THIRD COUNT.

And the Jurors aforesaid, upon their oath aforesaid, do further present that JOSEPH CARROLL, CHARLES CONLEY LYNCH, RICHARD BERRY NORTON, EDWIN FRANCIS HINDLE and PAUL W. CORDLE late of said City, on the said day, in the said year, at the City aforesaid, unlawfully did profanely curse and swear upon and near to a certain public street and highway in said City, within the hearing of certain persons then and there passing by and along the said highway, contrary to the form of the Act of Assembly, in such case made and provided, and against the peace, government and dignity of the State.

FOURTH COUNT.

And the Jurors aforesaid, upon their oath aforesaid, do further present that JOSEPH CARROLL, CHARLES CONLEY LYNCH, RICHARD BERRY NORTON, EDWIN FRANCIS HINDLE and PAUL W. CORDLE late of said City, on the said day, in the said year, at the City aforesaid, unlawfully was found acting in a disorderly manner, to the disturbance of the public peace, in and upon a place of public resort in said City, contrary to the form of the Act of Assembly, in such case made and provided, and against the peace, government and dignity of the State.

FIFTH COUNT.

And the Jurors aforesaid, upon their oath aforesaid, do further present that heretofore and before the commission of the offense hereinafter alleged, the Board of Recreation and Parks of Baltimore City, in pursuance of the authority conferred upon it by law and particularly as aforesaid

authority is codified under Section 96, Sub-section H, of the Baltimore City Charter, approved on the seventeenth day of July, in the year of our Lord nineteen hundred and forty-six, and made effective on the twentieth day of May, in the year of our Lord nineteen hundred and forty-seven, did pass, adopt and enforce a certain rule and regulation for the management, use, government and preservation and order with respect to all land, property and activities under its control, which said rule and regulation having been approved by the said Board of Recreation and Parks on the third day of February, in the year of our Lord nineteen hundred and forty-eight, is as follows:

"RULE #1

No person shall disturb the peace in any park by any act, nor shall any person behave in a disorderly manner."

And that JOSEPH CARROLL, CHARLES CONLEY, RICHARD BERRY NORTON, EDWIN FRANCIS HINDLE and PAUL W. CORDLE late of said City, on the twenty-eighth day of July, in the year of our Lord nineteen hundred and sixty-six, at the City aforesaid, in violation of the rule and regulation aforesaid, unlawfully did disturb the peace, and behave in a disorderly manner in a certain park under the jurisdiction of the Board of Recreation and Parks of Baltimore aforesaid, to wit, the Patterson Park, contrary to the form of the Act of Assembly, in such case made and provided, and contrary to the provisions of the Baltimore City Charter, aforesaid and against the peace, government and dignity of the State.

The State's Attorney for the City of
Baltimore

/s/ CHARLES E. MAYHAN, JR.

Indictment Number 3703

STATE OF MARYLAND,
CITY OF BALTIMORE, TO WIT:

The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present that JOSEPH CARROLL, CHARLES CONLEY LYNCH, RICHARD BERRY NORTON, EDWIN FRANCIS HINDLE and PAUL W. CORDLE, late of said City, on the twenty-second day of July, in the year of our Lord nineteen hundred and sixty-six, and thence continually upto and including the twenty-eighth day of July, in the year of our Lord nineteen hundred and sixty-six, at the City aforesaid, unlawfully conspired together and with each other to incite a riot, by the use of words, signs, language and other means, against the peace, government and dignity of the State.

SECOND COUNT.

And the Jurors aforesaid, upon their oath aforesaid, do further present that JOSEPH CARROLL, CHARLES CONLEY LYNCH, RICHARD BERRY NORTON, EDWIN FRANCIS HINDLE and PAUL W. CORDLE, late of said City, on the twenty-second day of July, in the year of our Lord nineteen hundred and sixty-six, and thence continually upto and including the twenty-eighth day of July, in the year of our Lord nineteen hundred and sixty-six, at the City aforesaid, conspired together and with divers persons to the Jurors aforesaid unknown, to unlawfully, riotously and tumultuously assemble and gather together to disturb the peace of the said State; and then

and there being so gathered together did make a great noise, riot, tumult and disturbance, and then and there unlawfully, riotously and tumultuously remained and continued, together for a long space of time; to the great terror and disturbance of the persons thereabouts inhabiting, residing and being; and to the terror of the people of the said State, against the peace, government and dignity of the State.

/s/ CHARLES E. MAYHAN, JR.
The State's Attorney for the City of Baltimore

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 330

CHARLES CONLEY LYNCH, JOSEPH CARROLL AND RICHARD BERRY NORTON,

Petitioners,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

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INDEX

Table of Contents

	PAGE
Opinion Below	1
Jurisdiction	1
Constitutional Provisions	2
Questions Presented	2
Statement of the Case	3
Argument:	
I. The Common Law Charges of "Conspiracy To Incite Riot", "Incitement To Riot", and "Disorderly Conduct", Neither On Their Face Nor As Applied In The Present Case Violate the First and Fourteenth Amendments of the United States Constitution	6
II. The Conviction of Petitioners was Amply Supported by Evidence Sufficient to Satisfy the Due Process Clause of the Fourteenth Amendment to the United States Constitution	9
Conclusion	13

Table of Authorities

Cases

Brady v. Maryland, 373 U.S. 83 (1963) 9

Cantwell v. Connecticut, 310 U.S. 296 (1940) 7, 8, 9, 10, 12

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) 7, 10, 12

Cox v. Louisiana, 379 U.S. 536 (1965) 12

Feiner v. New York, 340 U.S. 316 (1951) 8, 10, 12

Giles v. Maryland, 372 U.S. 767 (1963) 9

Giles v. State, 229 Md. 370, 183 A. 2d 359 (1962) 9

	PAGE
Jackson v. Maryland, 214 Md. 454 (1957)	8
Singer v. U. S., 380 U.S. 24 (1965)	8
Slansky v. State, 192 Md. 94, 63 A. 2d 599 (1949)	9
Terminiello v. Chicago, 337 U.S. 1, 4 (1949)	7
Wyley v. Warden, 372 F. 2d 742 (4th Cir. 1967)	9

Constitutions

Constitution of Maryland:	
Article 15, Section 5	9
United States Constitution:	
First Amendment	2, 6
Fourteenth Amendment	2, 6, 9

Statute

28 U.S.C. Section 1257(3)	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 330

CHARLES CONLEY LYNCH, JOSEPH CARROLL AND RICHARD BERRY NORTON,

Petitioners,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

OPINION BELOW

The Court of Appeals of Maryland denied Certiorari on March 4, 1968, as noted in 2 Md. App. 546, 236 A. 2d 45. The Order of the Maryland Court of Appeals denying Certiorari appears in the Record at p..... The Opinion of the Court of Special Appeals of Maryland is reported in 2 Md. App. 546, 236 A. 2d 45, and is set out in the Appendix, *infra* pp. 1A to 21A.

JURISDICTION

The Court of Appeals of Maryland denied Certiorari on March 4, 1968. The judgment of the Criminal Court of

Baltimore City was affirmed by the Maryland Court of Special Appeals on December 6, 1967.

Jurisdiction to review the judgment in question by Writ of Certiorari is conferred under 28 U.S.C. Section 1257 (3) since rights, privileges, and immunities are claimed by Petitioners under the Constitution of the United States.

CONSTITUTIONAL PROVISIONS

The First Amendment to the Constitution of the United States:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances."

Section 1 of the Fourteenth Amendment to the Constitution of the United States:

> "All persons born or naturalized in the United States and subject to the Jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTIONS PRESENTED

1. Whether the common law charges of "conspiracy to incite a riot", "incitement to riot", and "disorderly conduct", on their face or as applied to this case, violate the First and Fourteenth Amendments to the United States Constitution.

2. Whether the conviction of petitioners is supported by any evidence as required by the due process clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

Respondent accepts Petitioners' Statement of the Case, with the following additions:

Throughout the course of the rallies on July 25, 27 and 28, 1966, Petitioners' speeches were laced with calls on the crowd to "fight now", and they contained inflammatory and offense epithets directed towards Negroes, Jews and certain political institutions and office holders. Some of the remarks made during the course of the rallies were as follows:

July 25, 1966

Joseph Carroll — ". . . white people organize to fight yes, fight" (T. 239).[1] "The time has come for all white youths to unite and fight for white power. *Let's smash this nigger revolution here and now*" (T. 241). *"The time has come for us to fight* and that is exactly what we are going to do. How about you?" (T. 242) (Emphasis supplied.)

Richard Berry Norton — "Connie Lynch on the subject of violence is a moderate. I know he's a moderate. Connie Lynch personally told me he favors just enough moderate violence to get the niggers the hell out of America" (T. 243).

Charles Conley Lynch — "Certainly I believe in violence" (T. 252). "Anybody ask you to believe in non violence to defend what you believe is right you tell him 'Hell, yes, you believe in violence'. How you folk feel about it?" (T. 253). "We are going to kill all the niggers if it takes that to keep us white. How do you folks feel about that?" (T. 262) (Emphasis supplied).

July 27, 1966

Joseph Carroll — "Most of these nigger lovers are sick in the mind . . . they should be bound, hung and killed" (T. 272). ". . . if they want violence we'll give

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[1] The symbol "T" refers to the pagination of the Transcript of the Trial which is part of the Record.

it to them. White man, *that is the time to get your gun and kill your share of niggers* . . . we'll never, never have any racial peace and there can be no peace until the nigger hangs from every lamppost. (applause)" (T. 278). "White man fight" (T. 279) (Emphasis supplied).

Richard Berry Norton — "I know when they [C.O.R.E.] open up you white folks are going to beat the hell out of them" (T. 280).

Charles Conley Lynch — "Rise up and unite white man and fight" (T. 289).

July 28, 1966

John Carroll — "The white people aren't going to tolerate any more of this, *they are going to riot*. There is only one way [cries from the audience of white man fight]" (T. 298). "I want you to watch me: Raise your right fist and shake it. White man, fight" (T. 302) (Emphasis supplied).

Richard Berry Norton — "Are you ready to fight?" (T. 300).

Charles Conley Lynch — *"I know you are enthused with fight"* (T. 307) (Emphasis supplied).

Although the rallies were ostensibly held on behalf of the Citizens for Brailsford Committee, it appears that during the three nights of speeches, Mr. Brailsford's name was never mentioned. Further, although the scene of the rallies was in Patterson Park in Baltimore City, Mr. Brailsford was a candidate for the State Legislature from either Anne Arundel or Baltimore Counties (T. 37-38).

On the evening of July 28, part of the crowd listening to Petitioners' speeches began chasing two Negro boys who were merely passing through the park (T. 114, 115). Petitioner Carroll was seen leading the chase (T. 163-164). Also on the evening of July 28, an incident took place in the 200 block of Montford Avenue, about two blocks north of

Baltimore Street and one block from where Luzerne Street meets Patterson Park (T. 117-118). General George L. Gelston, Acting Police Commissioner of Baltimore City during July 1966, testified that the crowd on Montford Avenue had gone up from Patterson Park (T. 92). Another incident on July 28 took place near the swimming pool and basketball courts in Patterson Park. This incident involved a number of people who had been at the rally and had ran in that direction (T. 330, 447). Still another incident involved one Dennis Alexander, a 16 year old Negro youth who was walking his dog near Patterson Park on the night of July 28. He was beaten by a group of white boys and a rope was put around his neck (T. 421). The boys who inflicted the beating came from Patterson Park (T. 423). At least one of the boys involved in this beating was specifically identified as having been at the rally in Patterson Park (T. 435-436).

Major Wade Poole of the Baltimore City Police Department testified that on the evening of July 27, Petitioner Carroll pointed to members of CORE and said, "don't bother them now, let them listen to what we have to say, *then we'll get them*" (T. 176-204) (Emphasis supplied).

At the conclusion of the trial, the trial judge (Prendergast, J.) at the request of the parties gave his charge to the jury. He told the members of the Jury that under the Constitution of Maryland, the Jury is the Judge of both law and facts (T. 516-517). He also told them that it was the duty of the Court to advise the Jury upon the request of the parties, and that since he had been requested to do so, he was going to give them advisory instructions on the law. (T. 517).

The Jury was advised that a riot is a disturbance of the peace by three or more persons who carry out a common purpose in such a violent and turbulent manner as is cal-

culated to terrify others. They were further advised that inciting a riot means arousing or inducing others to commit a riot (T. 519). The Court went on to advise the Jury with regard to the burdens of proof, the meaning of "willfully", "disorderly conduct", "conspiracy" and on other phases of the law. (T. 519-521).

The Court advised the Jury that with regard to the right of free speech, the, "Federal Constitution guarantees to all men the right to freedom of speech. Speech is often provocative and challenging. It may create dissatisfaction with existing conditions or even stir people to resentment or anger. However, the right of free speech is not absolute. It does not protect the use of words which by their very utterance tend to incite an immediate breach of the peace, or to produce a clear and present danger of serious disorders or riots" (T. 526).

At the conclusion of the Judge's advisory instructions to the Jury, counsel for the State and Petitioners approached the Bench and were given an opportunity to take exception to the charge. Counsel for the Petitioners noted on the record that he had no objection (T. 532).

ARGUMENT

I.

The Common Law Charges of "Conspiracy To Incite Riot", "Incitement To Riot", and "Disorderly Conduct", Neither On Their Face Nor As Applied In The Present Case Violate the First and Fourteenth Amendments of the United States Constitution.

Taken as a whole, the charge to the jury given by Prendergast, J., in the trial of the case below fully, completely and properly protected all of Petitioner's rights of free speech as guaranteed by the First and Fourteenth Amend-

ments. The Court separately defined each of the terms riot, inciting to riot, disorderly conduct, willfully, etc. (T. 519-521). In addition to setting out the definitions of these terms, the Court clearly went on to spell out the constitutional guarantees extended to citizens when exercising their rights of free speech. The trial court below followed closely the pronouncements of this Court in *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942), *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940) and *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949). The jury was thus charged that in order to convict Petitioners, it must find that Petitioners' words tended to incite conduct which was illegal, and would destroy or menace public order and tranquility, or would produce a clear and present danger of serious disorders or riots. *Cantwell v. Connecticut, supra*, p. 308. The definitions given by the Court below of the various words and phrases obviously were intended to help the jury determine if the words used by Petitioners incited the assembled crowd or was likely to incite the crowd to do such acts as would constitute a riot, or other disorderly conduct.

Petitioners' argument on the above point seems to suggest that neither a riot nor a disturbance of the public peace is such conduct as consitutes a clear and present danger to justify punishment therefor as being outside the scope of protected free speech. We submit that there is neither basis in fact or law for this proposition. Absent this theory, Petitioners' argument simply overlooks the Court's charge to the jury with respect to the bounds of one's constitutionally protected rights of free speech set out on p. 526 of the Transcript.

Contrary to Petitioners' argument that they were convicted of the crimes of incitement to riot, conspiracy to incite riot and disorderly conduct "solely by reason of

speeches that they made", it is clear that in fact Petitioners were convicted not for what they said, but the reaction to what they said, and their intention to obtain such reaction. See *Feiner v. New York*, 340 U.S. 316, 320 (1951).

In order for one's speech to go beyond the constitutionally protected bounds of free speech, it is not necessary that the words uttered actually cause a riot or disturbance of the peace, but it is sufficient if such words are ". . . *likely to produce* violence in others. No one would have the heartihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other *immediate threat* to public safety, peace or order, appears, the power of the state to prevent or punish is obvious." *Cantwell v. Connecticut, supra* at p. 308.

We also call to the attention of the Court that if, *arguendo*, the charge of the Court below to the jury was improper, Petitioners waived this defect and failed to preserve their right on appeal by not noting any exceptions to the charge as given. *Singer v. U. S.*, 380 U.S. 24 (1965); *Jackson v. Maryland*, 214 Md. 454 (1957), cert. denied 356 U.S. 940.

Petitioners take exception in their brief in this Court to the Trial Court's advisory instructions to the jury in that the Trial Court advised the jury that it (the jury) was the judge of the law as well as the facts under the Constitution of Maryland, and that the jury could arrive at its own independent conclusions on matters of law. This principle, though unusual to the State of Maryland,[2] has been long

[2] Indiana appears to still also have a similar constitutional provision.

founded in the Constitution of this State. Article 15, Section 5, Constitution of Maryland. The constitutionality of this provision has been consistently upheld by the Maryland Court of Appeals.[3] This Court has had occasion in the past to consider this provision of the Maryland Constitution, and has not intimated any doubt of its constitutionality. In *Giles v. Maryland*, this issue was raised along with others, but the appeal was dismissed by this Court for want of a substantial federal question. 372 U.S. 767 (1963). Also, in *Brady v. Maryland*, 373 U.S. 83 (1963) this Court took note of Section 5 of Article 15 of the Maryland Constitution without questioning its constitutionality. In *Wyley v. Warden*, 372 F. 2d 742 (4th Cir. 1967) the constitutionality of this Maryland provision was specifically upheld.

II.

The Conviction of Petitioners Was Amply Supported by Evidence Sufficient to Satisfy the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

On this issue of the case, there does not appear to be any dispute as to the applicable law, but the dispute rather, centers around the application of the law to the existing facts. The law in this area has been well set out in numerous previous Supreme Court cases.

The language of this Court in *Cantwell*, at page 308 cited above is opposite here, particularly since the Court was there considering the Connecticut common law crime of breach of the peace. In *Cantwell* it was also noted that:

> "There are limits to the exercise of these liberties [freedom of speech, etc.]. The danger in these times

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[3] *Slansky v. State*, 192 Md. 94, 63 A. 2d 599 (1949); *Giles v. State*, 229 Md. 370, 183 A. 2d 359 (1962).

from the coercive activities of those who in the delusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal right to the exercise of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the states appropriately may punish."

Two years after *Cantwell*, this Court added to the clear and present danger test the "fighting words" doctrine in *Chaplinsky v. New Hampshire, supra*. It said:

"There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."

In *Feiner v. New York, supra*, this Court again had occasion to comment on the application of the clear and present danger test to a specific set of facts before it. There it was noted:

"This Court respects, as it must, the interest of the community in maintaining peace and order on its streets. . . . It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace." pp. 320-321.

Petitioners, in the trial below, and in their briefs on appeal, have attempted to make much of their alleged efforts

to cooperate with the police and to urge the crowd to not commit violent acts. When considered in the light of Petitioners' entire speeches, the tone of the speeches, and the mood and temperament of the crowd created intentionally by Petitioners' speeches, it is readily seen that Petitioners' supposed calls for non-violent action by the crowd were as empty as a vacuum sealed can of air. It reminds one of the old vaudeville act in which the comedian raised his left hand as if to quiet the crowd's applause, but with his right hand held low visibly and even urgently called on them to continue their show of appreciation. What else could the speakers have been urging but violence, rioting, civil disorder and breach of the peace when they told the crowd: "Let's smash this Nigger Revolution here and now" (T. 241). "The time has come for us to fight and that is exactly what we are going to do" (T. 242). "Certainly I believe in violence. . . . We are going to kill all of the Niggers if it takes that to keep us white. How do you folks feel about that?" (T. 252-262). "We'll never, never have any racial peace and there can be no peace until a Nigger hangs from every lamp post (Applause)" (T. 278). Led on by Petitioners in their speeches, the crowd over and over again shouted "White man fight".

Petitioners argue in their Brief that during and following the rallies on July 28, 1966, there were "only a few incidences". Respondents suggest that the films of these "few incidences" graphically show the very serious nature of the outbreaks that took place during the rally on the 28th and following the speeches that evening. It is particularly interesting to note that the two major incidences, that is, the one involving a group of mixed Negro and white boys playing basketball at a court in Patterson Park, and the attempted lynching of a Negro youth who was out walking

his dog near Patterson Park, involved victims completely innocent of any association with the rallies. The same cannot be said for the perpetrators of the violence. They were specifically identified by a number of witnesses as having come directly from the rally (T. 92, 330, 423, 435-436, 447).

Petitioners argue that there could not have been a clear and present danger existing on the night of the 28th since there was only one minor injury reported. We make reference only to the near lynching of young Alexander. Do Petitioners mean to suggest that their conviction could only be allowed to stand if young Alexander and others had been found swaying from the end of ropes thrown over trees and lamp posts in the area, their feet hanging limply in the air, and the breath of life literally choked from them? The mere suggestion is preposterous. Certainly, there is nothing contained in *Cantwell, Chaplinsky, Feiner,* or any of the other applicable Supreme Court cases which suggest any such needed result.

There is a very obvious difference between the case at bar and the situation before this Court in *Cox v. Louisiana,* 379 U.S. 536 (1965) cited by Petitioners in their brief. In *Cox* the threat to peace and order of the community was created as a result of the "muttering" and "grumbling" of white onlookers who were violently opposed to petitioners and their avowed intent to carry out a non-violent protest against segregation. In the present case, a clear and present danger was created not because others took exception to the views of the speakers at the Patterson Park rallies, but because the very words of the speakers called on those in the crowd who agreed with them to go out and riot, kill, maim and create civil disorder and disobedience. In this respect, the case before this Court is much more akin to the *Feiner* case, *supra.*

Respondents submit that upon a complete review of the evidence in this case, including a review of the documentary evidence (films and taped recordings), it is clear beyond any reasonable doubt that the words spoken by Petitioners on July 28, 1966, went beyond any constitutionally protected bounds of free speech and created a clear and present danger of imminent public disorders so as to constitute a very real threat to the peace and safety of not only the people in the immediate vicinity of Patterson Park in Baltimore City, but probably the entire city.

CONCLUSION

For the reasons set out above, it is respectfully submitted that Certiorari should be denied.

Respectfully submitted,

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